

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 3225 of 2007(H)

PETITIONER:

**ABDUL RASHEED,
MANAGER, S.M.T. U.P. SCHOOL, BADHARIYA U.P.S. ON
UP-GRADATION, VELICHIKKALA.**

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENTS:

**1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

**2. THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM-9.**

**3. THE DISTRICT EDUCATION OFFICER,
KOLLAM-13.**

BY GOVERNMENT PLEADER SRI. A.J. VARGHESE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1. COPY OF G.O.(Rt) NO.5066/2000/G.Edn. DT. 11.12.2000**
- EXT.P2. COPY OF INTERIM ORDER DT. 3.9.03 IN I.A. 1103/03 IN O.P. 33516/00**
- EXT.P2(a). COPY OF JUDGMENT IN O.P. NO.33516 OF 2000 DT. 21.11.03**
- EXT.P3. COPY OF THE G.O.(Rt) NO.1634/05/G.Edn. DT. 23.4.05**
- EXT.P4. COPY OF INSPECTION REPORT DT. 23.6.04**
- EXT.P5. COPY OF THE FINDINGS OF THE D.E.E., KOLLAM RECORDED IN THE SCHOOL DIARY**
- EXT.P5(a). COPY OF THE LETTER NO. B1/18043/05 DT. 6.7.05 OF THE 2ND RESPONDENT D.D.E., KOLLAM**
- EXT.P6. COPY OF INSPECTION REPORT DT. 29.6.05**
- EXT.P7. COPY OF THE VISIT REPORT BY SINDHU.A, H.S.A. G.H.S.S.PARAVOOR, KOLLAM**
- EXT.P7(a). COPY OF JUDGMENT DT. 15.3.06 IN W.P.(C) NO.7343/06**
- EXT.P7(b). COPY OF JUDGMENT IN W.A. 852/06 DT. 24.5.06**
- EXT.P8. COPY OF GAZETTE NOTIFICATION DT. 27.6.03**
- EXT.P9. COPY OF LETTER FROM THE SECRETARY TO GOVT. TO THE ADVOCATE GENERAL, ERNAKULAM DT. 1.2.06**
- EXT.P9(a). COPY OF LEGAL OPINION FROM ADVOCATE GENERAL, DT. 18.2.06**
- EXT.P10. COPY OF REPLY AFFIDAVIT FILED BY THE RESPONDENT IN CONT. CASE (C) NO. 613 OF 2006**
- EXT.P11. COPY OF INTERIM ORDER IN WPC NO.32997/06 DT. 12.12.06**
- EXT.P12. COPY OF GOVT. ORDER G.O.(Rt)NO.4029/06/G.Edn. DT. 18.9.06**

- EXT.P13. COPY OF THE JUDGMENT IN CONT. CASE (C) NO.613/06 DT. 30.12.06**
- EXT.P14. COPY OF ORDER DT. 10.1.07 IN I.A. 3654/06 IN C.C(C) 613/06**
- EXT.P15. COPY OF LIST OF TEACHERS WORKING IN THE UPGRADED V.P.S. AS WELL AS THE NEWLY ADDED L.P.S.**
- EXT.P16. COPY OF G.O.(Rt) NO. 280/07 DT. 19.1.07 OF THE 1ST RESPONDENT**
- EXT.P17. COPY OF THE GOVT. ORDER (RESPONDENT) NO. 146/2004/G.Edn DT. 9.1.04**
- EXT.P18. COPY OF THE GOVERNMENT ORDER (MS) NO.152/03/G.Edn DT. 9.6.03**
- EXT.P19. COPY OF THE GOVT. ORDER (P) NO. 147/2003/G.Edn DT. 5.6.03**
- EXT.P20. COPY OF THE AFFIDAVIT DT. 19.6.06**

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 3225 OF 2007

Dated this the 6th day of July, 2007

J U D G M E N T

Petitioner is stated to be the manager of an educational institution situated in Nedumpana Panchayat within the administrative jurisdiction of the Assistant Educational Officer, Kundara. It is on record that the school had been functioning with Standards V to VII up to 2003-04 with recognition. Now Standards I & II in the Lower Primary section and Standards VIII to X in the High School section are also being conducted without recognition. For the sake of convenience, the prayers made in the writ petition are extracted hereunder:

“(i) To call for the entire records leading up to Exts.P12 and to quash the same by the issuance of a writ of certiorari or any other writ, direction or order.

(ii) To issue a writ of mandamus compelling the respondents to pass the final order as ordered by the Division Bench of this Hon'ble Court in the Ext.P7(b) Judgment dated 24.5.2006 in W.A. 852/2006 and as made absolute in Ext.P14 order dated 10.1.2007 in I.A. 3654/2006 in C.C.(C) 613/2006.

(iii) To issue a writ of mandamus compelling the respondents to receive the fees for the S.S.L.C. Examinations to be held in March 2007 and to make connected evaluations and also to compel them to finalise the staff fixation for the last three years commencing from 2004-05 onwards and to release the salary of the teachers in penury by complying with the formalities.

(iv) To issue a writ of mandamus compelling the respondent to permit

the students to continue their studies in the petitioner's school itself and to participate in the S.S.L.C. Examination from there in modification of the directions contained in Ext.P16."

2. Learned counsel submits that petitioner will be satisfied if prayer Nos. 1 & 2 are considered by this Court at this stage.

3. By Ext.P12 order, the Government has rejected the request made by the petitioner for opening Lower Primary School and upgradation of the existing Upper Primary school as High School. It is observed in the order that petitioner can apply afresh as and when the Government finalises the guidelines and issues notification calling for proposals for opening/upgradation/recognition of schools in the State.

4. Learned counsel takes strong exception to the above stand taken by the Government in Ext.P12 order. He invites my attention to Ext.P5(a) communication sent by the Deputy Director of Education, Kollam to the Secretary to Government in the General Education (F) Department in July 2005. Learned counsel points out that the Deputy Director had categorically stated that the area in question where the petitioner's school is situated is totally a backward area and therefore upgradation of the existing Upper Primary section would be highly useful and convenient for the pupils now studying in

the Upper Primary section. The officer had referred to four High Schools which are functioning near the school of the petitioner.

Those schools are:

- | | |
|-------------------------------------|--------|
| (1) Adichanalloor Panchayat H.S. | 3 Kms |
| (2) S.M.H.S. Kottara | 4 Kms |
| (3) MKCMHS Kannanalloor | 5 Kms |
| (4) Government High School Pallimon | 6 Kms. |

5. The officer had forwarded other details also regarding accommodation, roll strength etc. which were verified by him at the time of inspection in June 2005. These details are also on record as Exts. P6 & P7.

6. Learned counsel has also invited my attention to Ext.P20 affidavit filed by the Secretary to Government in Cont. Case (C) 613/06, which arose from the judgment of this Court in W.P.C. 7343/06 filed by the petitioner. In the said affidavit dated June 19, 2006, the deponent, the Secretary to Government in the General Education Department, had referred to the observations made by the hearing officer as regards the request made by the petitioner for upgradation. The deponent stated that the officer had found that the request made by the petitioner was genuine and upgradation of the

existing Upper Primary section would be a help to the pupils now studying in the school. Para. 4 of the said affidavit is extracted hereunder:

“Accordingly the file when circulated for taking a final decision on granting aided Lower Primary School and upgradation of existing Upper Primary school, the former Chief Minister has agreed to place the matter before the council. As a decision could not be taken due to the declaration of General Elections, the connected file is now submitted to the new Ministry for a decision. It is submitted that the new Ministry require some time to study all the implications including Financial commitment, before taking a decision in the matter.”

7. Laying heavy emphasis on the above averments made by the Secretary in the Department, learned counsel submits that the issue had been more or less settled in favour of the petitioner in the year 2006 itself. Petitioner is now made to run from pillar to post because of the vacillating stand adopted by the Government. Petitioner had in fact admitted students to Standard VIII to X with the hope that it was a matter of time before the Government accorded sanction for upgradation. But now, Ext.P12 order has been passed by the Government without taking into consideration the report of the Deputy Director of Education or the officer of the Government who had examined the files meticulously.

8. Learned counsel has also invited my attention to Exts. P17 to P19 orders issued by the Government according sanction for

upgradation in the case of several other schools. It is pointed out by the learned counsel that the schools which were situated in identical circumstances were granted sanction. He contends that the stand taken by the Government in the case of the petitioner is highly discriminatory.

9. On the contrary, it is contended by the learned Government Pleader that Ext.P12 order was passed keeping in view the policy decision of the Government at that relevant point of time and also the fact that the neighbouring Adichanalloor Panchayat had raised some objections.

10. Having heard learned counsel for the petitioner and the learned Government Pleader and having perused the materials placed on record, I am satisfied that the matter has to be reconsidered by the Government. Therefore, Ext.P12 order is quashed. I have taken the above view for yet another reason. It is on record that the Government has now issued an order stipulating the guidelines for sanction/upgradation etc. of new and existing schools in the State. Since the Government has now formulated a policy and has come out with new guidelines, I am of the view that interest of justice will be met if the request of the petitioner is considered in the

light of the new policy/guidelines. While taking a fresh decision in the matter, the Government shall have due regard to Ext.P20 affidavit and Ext.P5 report of the Deputy Director of Education apart from Exts.P6 and Ext.P7 reports as well. Similarly, Exts. P17 to P19 and the judgment of the Division Bench of this Court in W.A. No.1325/06, on which heavy emphasis has been placed by the learned counsel for the petitioner at the time when he argued this case, shall be kept in views. The Government shall take a fresh decision in the matter, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment keeping in view the observations made above. The Government shall ensure that petitioner and all other interested parties are afforded sufficient opportunity to be heard before any decision is taken.

The writ petition is disposed of as above.

A.K. BASHEER, JUDGE

vps

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